IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.19 OF 2007

Mrs.Hiral Rupesh Saliya — Petitioner
vs.
The State of Maharashtra & ors. — Respondents

Mr.Ganesh Gole for the petitioner.

Mr.Borulkar, PP for respondent 1.

CORAM : SMT.RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 11th January, 2007

P.C.

The primary grievance of the petitioner appears to be that Order dated 11th December 2006 passed by this Court in Criminal Writ Petition No.2329/2006 has not been followed by the learned Metropolitan Magistrate, Andheri Railway Mobile Court, Andheri, Mumbai.

2. We have heard at some length Mr.Gole, the learned counsel appearing for the petitioner. He drew our attention to order dated 11th December 2006 passed by this Court. He submitted that this Court had clarified that the petitioner will be at liberty to pray for rejection of the B Summary. A prayer was made that the petitioner may be allowed to place all the contentions raised in the earlier petition before the Magistrate in

opposing B Summary proceedings. It was further prayed that liberty may be granted to the petitioner to file fresh petition if the occasion arises. This court allowed the petition to be withdrawn with the liberty as prayed for. Mr.Gole submitted that in view of this order, it was incumbent upon the learned Magistrate to hear the petitioner before grant of B Summary. He submitted that instead the learned Magistrate has issued notice dated 22nd December 2006 which indicates that he has already made up his mind on the basis of the report filed for classification of offence as B Summary. No hearing was given to the petitioner. He therefore submitted that appropriate direction be given to the learned Magistrate.

3. We have also heard Mr.Borulkar, the learned PP.

4. In our opinion, the petition can be disposed of by giving specific direction to the learned Magistrate that before considering the report filed by the police for classification of the offence as B Summary, the petitioner should be given a hearing. We therefore direct the learned Magistrate to decide whether to accept the report or not after hearing the petitioner, independently and without being influenced by the report submitted by the police and in accordance with law. He shall pass a reasoned order either accepting or

rejecting the report of the police. We make it clear that we have not expressed any opinion on the merits of the case.

5. Petition stands disposed of accordingly in the above terms.

[SMT.RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]